

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1434 OF 2014

Babasaheb s/o Fakirrao Dabhade,
Age: 24 years, Occupation: Nil,
Residing at N-7, C-56,
Old Police Colony, Aurangabad

..PETITIONER
(Ori. Respondent-Husband)

VERSUS

1. Jayshree w/o Babasaheb Dabhade,
Age: 23 years, Occupation: Household,
Residing at c/o Shankar Shenfhadu R.K.
At Wadgaon Kolhati Bajaj Nagar

2. Sakshi d/o Babasaheb Dabhade,
Age: 4 years Minor under the
Guardian ship of her real mother
respondent No. 1 as above

3. The State of Maharashtra

..RESPONDENTS
(No. 1 & 2-Ori. Applicants,
No. 3 formal party)

Mr Hemant Surve, Advocate for petitioner;
Mr R. A. Jaiswal, Advocate for respondent Nos. 1 and 2;
Mr D. V. Tele, Addl. Public Prosecutor for respondent No. 3

CORAM : N.W. SAMBRE, J.

DATE : 10th March, 2016

ORDER :

By the present petition, the petitioner – husband questions legality and validity of the order dated 31st October, 2014, passed by Principal Judge, Family Court, Aurangabad, in Criminal Misc. Application No.45 of 2013, whereby the application preferred by the respondent – wife for restoration of maintenance proceedings, which had been dismissed in

(2)

default, came to be allowed.

2. Facts, as are necessary for decision of the present petition, are as under :-

Respondent no.1 claimed to have married to the petitioner and has given birth to child, namely, Sakshi – respondent no.2. In view of indifferences between the parties, the proceedings seeking maintenance were initiated before the Family Court, Aurangabad. The said proceedings came to be dismissed in default for absence of respondent no.1 Jayshree. Respondent no.1 thereafter filed application for restoration before the Family Court, which was strenuously objected by petitioner Babasaheb by filing reply, refuting the cause for restoration. According to him, the cause shown was false and as such, restoration should not be granted.

3. Learned Judge thereafter fixed the matter for recording of evidence on 24th December, 2013 and thereafter adjourned it time and again and suddenly passed an order on 31st October, 2014 granting restoration, which is impugned in the present petition.

4. Mr Surve, learned Counsel appearing on behalf of the petitioner would strenuously urge that the petitioner has every right to claim fair trial and right to cross-examine respondent no.1, who had produced a certificate of the Doctor. According to him, he has also every right to seek cross-examination of the Doctor, particularly in the background of the

(3)

pleadings/objections raised in the reply to the application for restoration. He would then submit that prejudice is caused to the petitioner, as the matter was fixed for recording of evidence and thereafter, without recording evidence, based on existing pleadings, learned Judge of the Family Court has proceeded to allow the application.

5. He has sought support from the judgment of this Court, in the matter of **Gramin Vikas Shikshan Sanstha & anr. vs. Bhikshuk @ Biskut s/o Sakharam Pasande & ors.**, reported in **2014 (3) Mah.L.J. 694**, so as to canvass that right to fair trial includes right to cross-examination. In support of his submissions, he has also placed reliance on the judgment of the Apex Court, in the matter of **Adalat Prasad vs. Rooplal Jindal & ors.**, reported in **2005 (3) LJSOFT (SC) 115**.

6. With the assistance of Mr Surve, I have perused the entire record including the pleadings. No doubt, Mr Surve is right in pointing out that initially the matter was fixed for recording of evidence in the application. However, it is required to be noted that the learned Judge thereafter adjourned the matter from time and again for hearing of the matter. I hardly noticed any prayer in the objection to the restoration application, seeking cross-examination of respondent no.1. Neither such prayer was made in the objection nor an independent application seeking cross-examination of respondent no.1 or the Doctor was claimed. Perusal of the record depicts that the present petitioner has whole-heartedly participated in the hearing of the matter, without raising any plea as regards his right to

(4)

claim cross-examination of either respondent no.1 or the Doctor.

7. In that view of the matter, in my opinion, the claim as is sought for that there was denial of an opportunity of hearing and fair trial, is liable to be rejected.

8. Reliance placed on the judgments of Gramin Vikas Shikshan Sanstha & anr. and Adalat Prasad (supra), in my opinion, will hardly be of any assistance, as in the said matters the rights of the parties were finally adjudicated upon, whereas in the present case it is a social legislation, in which respondent no.1 – wife along with her minor daughter has claimed maintenance. The maintenance proceedings pending before the Family Court are not decided on merits and the present petitioner will get appropriate opportunity to raise his defence in the said main proceedings.

9. In the above background, in my opinion, no case for interference in extraordinary jurisdiction is made out. Writ Petition fails and stands dismissed.

(N.W. SAMBRE, J.)

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